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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
15 MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
16 MAZZOLA,

17 Defendants, and

18 SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
19 MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
20 GROUP IV LLC; CLEAR SAILING
GROUP V LLC,
21

22 Relief Defendants.

Case No. 3:16-cv-01386-EMC

**SECOND INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSION RECEIVER AND COUNSEL
FROM APRIL 1, 2019 THROUGH JUNE 30,
2019 AND FOR CLAIMS AGENT
STRETTO FROM JUNE 18, 2018
THROUGH FEBRUARY 28, 2019**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

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24 **I. Relief Requested**

25 On February 28, 2019, the Court entered its Revised Order Appointing Receiver (Dkt. No. 469)
26 and appointed Kathy Bazoian Phelps as the replacement receiver ("Receiver"). On March 18, 2019,
27 the Receiver filed an administrative motion for an order approving the employment of Diamond
28 McCarthy LLP ("Diamond McCarthy") to serve as general counsel to the Receiver effective as of

February 1, 2019 and Stretto¹ as her claims' agent (Dkt. No. 471-472, 474), which was approved by the Court on March 20, 2019 (Dkt. No.476).

Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of \$85,735.50² for services rendered from April 1, 2019 through June 30, 2019³, and reimbursement of expenses in the amount of \$185.93. Diamond McCarthy seeks compensation in the amount of \$30,625.00⁴ for services rendered from April 1, 2019 through June 30, 2019, and reimbursement of expenses in the amount of \$1,924.16. Stretto seeks compensation in the amount of \$2,958.40 for the period of June 18, 2018 through February 28, 2019. This motion is supported by the Declaration of the Receiver and the Declaration of Lesley Anne Hawes of Diamond McCarthy. The Receiver has conferred with counsel for the Securities and Exchange Commission ("SEC"), and for the SRA Funds Investor Group, and is advised that they do not oppose the Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of judgment against defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11(a)).

II. Previous Fee Motions

This is the second interim fee motion by the Receiver and her counsel. On May 28, 2019, the Receiver filed her first interim motion for the payment of fees and expenses for services rendered by the Receiver and Diamond McCarthy from the inception of the Receiver's activities through March 31, 2019 (Dkt. No. 482). The Receiver requested fees in the amount of amount of \$46,287.00 and reimbursement of costs in the amount of \$3,030.33. Diamond McCarthy requested fees in the amount of \$16,802.80 and reimbursement of costs in the amount of \$524.67. On June 6, 2019, the Court entered an order approving fees to the Receiver in the amount of \$46,287.00 and reimbursement of

¹ Stretto previously known as JND Corporate Restructuring served as the prior Receiver's claims agent.

² The Receiver has agreed to a holdback of 20% of this amount so seeks payment of \$68,588.40 at this time.

³ The fee requests includes \$3,796.00 incurred prior to April 1, 2019, that were not previously requested.

⁴ Diamond McCarthy has agreed to a holdback of 20% of this amount so seeks payment of \$24,500.00 at this time.

1 costs in the amount of \$3,030.33 and authorizing payment to the Receiver from the assets of the estate
2 the sum of \$3,030.33 for costs and \$37,029.60 for fees; \$9,257.40 of the approved fees was held back
3 until further order of the Court (Dkt. 485). The Court similarly granted Diamond McCarthy's
4 requested fees in the amount of \$16,802.80 and costs in the amount of \$524.67 and authorizing the
5 Receiver to pay Diamond McCarthy \$524.67 in approved costs and \$13,442.24 of the fees approved;
6 \$3,360.56 of the approved fees was held back until further order of the Court (Dkt. 485). The Receiver
7 has paid the amounts authorized for payment, net of the holdbacks.

8 **III. Case Status**

9 The Receiver has negotiated extensively with the various interested parties in this case and has
10 worked with the SEC in refining the claims work. The Receiver proposed her own distribution plan
11 based upon alternative plans previously submitted by the SEC and the SRA Investor Group. With
12 the assistance of counsel, the Receiver has made significant progress in moving the case forward.
13 Among other things, the Receiver prepared and filed her Motion to Disallow Certain Claims (Dkt.
14 No. 481) which was granted by the Court (Dkt. No. 501). The Receiver also negotiated and
15 entered into a stipulation with the judgment creditor Progresso Ventures, LLC, resolving disputes
16 pertaining to the treatment of its claim (Dkt. No. 490, 502).

17 Through evaluating a number of documents including forward purchase agreements and stock
18 transfer agreements and by sending out letters to a number of entities, the Receiver and her counsel
19 confirmed shares held by the estate. The Receiver's proposed Plan of Distribution was heard by
20 the Court on June 27, 2019 (Dkt. No. 487). The Receiver's Plan drew support from the SEC,
21 Progresso Ventures, and the SRA Funds Investor Group, with certain exceptions pertaining to
22 specific provisions. The Court also approved certain provisions of the Receiver's Plan of
23 Distribution, including the consolidation of the Solis Associates Fund into the receivership estate.

24 The receivership estate presently has \$934,811.42 in cash on hand in a checking account,
25 money market account and the segregated Anna Bivona funds, subject to known accrued expenses
26 and unpaid expenses of \$121,068.99 and holdbacks of \$157,245.47. Unencumbered funds in the
27 estate, after deducting expenses and holdbacks incurred through June 30, 2019 total \$656,496.96.
28 Attached to the Declaration of the Receiver as Exhibit "F" is a financial summary showing the cash

status of the estate as of June 30, 2019. Funds in the amount of \$70,156.29 have been disbursed during this period.

The assets of the estate in addition to cash on hand consist of shares held by the estate, and shares held by Equity Acquisitions Company (“EAC”) in which the estate has an interest. The Receiver has advanced negotiations with EAC for the exchange and disposition of shares owed to the estate by EAC and shares held by the estate that are owed to EAC. Additionally, the Receiver has demanded the transfer of 12,500 shares of stock on MongoDB from a third party who is obligated to transfer those shares to Clear Sailing Group IV under an agreement entered into before the Receiver’s appointment. The Court has also granted the Receiver’s request to commence litigation against EAC and Ben Sabrin, if necessary.

IV. The Receiver’s Fee Motion

As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has established separate billing categories for services provided to address legal issues (2598-11- Case Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and Recovery; 2598- Plan Implementation) and a separate category for administrative services provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver has agreed to charge \$130.00 per hour for both herself and administrative assistance. For the rest of the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating savings to the estate. The billing statements itemizing the services provided and expenses incurred are contained in Exhibits A-E attached to the Declaration of the Receiver. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	28.70	12,197.50	185.93
Administrative Services	59.60	7,748.00	n/a
Claims Administration/Objection	49.90	21,207.50	n/a
Asset Analysis and Recovery	34.80	14,790.00	n/a
Plan Implementation	74.60	29,792.50	
TOTAL	247.60	85,735.50	\$185.93

V. Diamond McCarthy's Fee Motion

As detailed in the Declaration of Lesley Anne Hawes, Diamond McCarthy has established the following billing categories for tasks performed (2622-11- Case Administration; 2622-12- Claims Administration/Objection; 2622-13- Plan Implementation; 2622-15 Asset Analysis and Recovery). Services were primarily performed by partners Ms. Hawes and Sheryl Guigliano at a discounted hourly rate of \$425.00. They were assisted by paralegal Catherine A. Burrow, whose hourly rate is discounted to \$195. The billing statements itemizing the services provided and expenses incurred are attached as Exhibits A-D to the Declaration of Ms. Hawes. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	19.40	7,808.00	1,557.99
Claims Administration/Objection ⁵	56.40	13,551.00	366.17
Plan Implementation	13.30	4,548.50	n/a
Asset Analysis and Recovery	11.10	4,717.50	
TOTAL	100.20	30,625.00	\$1,924.16

VI. Stretto Fee Motion

Attached as Exhibit H to the Declaration of the Receiver are the billing statements itemizing the amounts owed and the services performed by Stretto. As is shown from the billing statements, the estate is charged \$108.00 per hour for consultant services and \$175 per hour for director services. The total amount sought by Stretto is \$2,598.40.

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⁵ The vast majority of these hours were incurred for paralegal services as reflected in the billing statement attached as Exhibit B to the Declaration of Ms. Hawes.

VII. Conclusion

The Receiver, Diamond McCarthy, and Stretto respectfully submit that the fees and expenses sought herein are reasonable and that the services rendered were necessary, effective, efficient, and economical.

WHEREFORE, Diamond McCarthy, the Receiver, and Stretto seek entry of an order granting the Motion in all respects.

Dated: August 9, 2019

DIAMOND McCARTHY, LLP

By: /s/Lesley Anne Hawes
Lesley Anne Hawes
Counsel for the Receiver